REMARKS

Claims 1-30 are pending. Applicants elect Group I (claims 1-25) and the species: (A) influenza virus, (B) *E. coli*, (C) *E. coli* fimbria antigen, and (D) human allergen with traverse for examination on the merits. Applicants reserve the right to prosecute non-elected subject matter in a further patent application.

Claim 5 is amended to correct a lack of antecedent basis. Claim 7 is amended to correct a typographical error. Amendment of claims 26-30 reformats them as "method" claims to conform with U.S. practice which does not permit "use" claims. Such claim amendments do not change the original scope of the claims.

Reconsideration of the Examiner's requirements for restriction and election of species is requested. Traversal is not based on the species being "clearly unpatentable (obvious) over each other" as discussed in the M.P.E.P. § 808.01(a).

With respect to the restriction requirement, traversal is based on three separate grounds: no undue burden, previous examination of claims 1-30, and unity of invention.

There is a lack of a showing that examining claims of Groups I-II would constitute an undue burden. Although the inventions identified by the Examiner are separately patentable, both the need for compact prosecution and the public interest would be served by examination of all claims in a single application.

It is also noted that no lack of unity was found during the International phase of examination. Claims 1-30 were the subject of both the Int'l Search Report and the Int'l Preliminary Examination Report.

Applicants disagree with the Examiner's contention that claims 1-30 lack unity of invention, and hence fall into different groups of inventions. It was alleged in the Action that Grangette et al. (Immunol. Lett. 69:176, 1999) teaches the invention, but it is noted that such conclusion is premature because no such rejection of the claims has been made and Applicants have not had the opportunity to respond. Therefore, Applicants request that claims 1-30 be examined together in this application because they are so linked as to form a single general inventive concept under PCT Rule 13.1. With regard to the statement that the antigens listed in claim 7 are of disparate structure and

immunogenic specificity, Applicants' invention is directed to a bacterium which may be used as a vaccine by expressing heterologous antigen intracellularly and/or on the surface of the bacterium. Such expression and the generic description in claim 1 shows that all of the heterologous antigens should be examined in this application. Claim 1 is considered to be a linking claim.

Upon an indication that the claimed vaccine or bacterium is allowable, Applicants submit that claims directed to their uses and methods of manufacture would have to be searched and examined. The delay in the search and examination of claims 26-30 would not result in compact prosecution and is not in the public interest. Furthermore, under the Commissioner's Notice of March 26, 1996 (1184 OG 86) implementing the Federal Circuit's decisions of *In re Ochiai*, 37 USPQ2d 1127 (1995) and *In re Brouwer*, 37 USPQ2d 1663 (1996), rejoinder of process claims is requested upon an indication that a product claim is allowable.

With respect to the election of species, the Examiner's position seems to be that the species in each of claims 5-8 do not relate to a single general inventive concept. If this requirement is maintained, the Examiner is respectfully requested to cite the legal authority for requiring an election of species under the "lack of unity" practice which applies to PCT national-stage applications.

Applicants submit that the above restriction requirement is an admission by the Examiner that claims 1-25 relate to a single general inventive concept because there is unity of invention with respect to Group I. Therefore, claims 5-8 which depend from claim 1 are clearly related to a single general inventive concept. The invention concerns oral *Lactobacillus* vaccines and Applicants submit that claim 1 is new and patentable. This alone negates the requirement of an election of species even though they are separately patentable. Relatedness of the antigens' chemical structures is not required because a special technical feature does not have to be structural. Rather the relationship which exists among the species is that they are either pathogenic microorganisms or heterologous antigens as the Examiner recognized on pages 2-3 of the Office Action (Paper No. 012004).

Applicants note that claim 7 is directed to a viral and/or bacterial antigen. The term "optionally" precedes the antigens listed on page 3 of the Office Action (Paper No. 012004). Thus, it appears that the Examiner should have required an election between a viral or a bacterial antigen. If the Examiner requires such an election of species, Applicants elect bacterial antigen.

Applicants earnestly solicit an early and favorable examination on the merits. The Examiner is invited to contact the undersigned if any further information is required.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____

Gary R. Tanigawa
Reg. No. 43,180

1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100